

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**MATTHEW WIGGENHORN,
individually and on behalf
of all others similarly situated,**

Plaintiff,

v.

**EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,**

Defendant.

No. 04-CV-0372-DRH

ORDER

HERNDON, District Judge:

This matter comes before the Court for the purpose of docket control. On June 2, 2005, Plaintiff filed a First Amended Complaint (Doc. 30).¹ Pursuant to **RULE 15(a)**, Plaintiff is entitled to amend his complaint without leave of the Court. However, the First Amended Complaint violates **LOCAL RULE 15.1. LOCAL RULE 15.1** states in part: "All new material in an amended pleading should be underlined. ..." Plaintiff did not underline the new material in the First Amended Complaint. Thus,

¹**FEDERAL RULE OF CIVIL PROCEDURE 15(a)** provides in part: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served ..." As of this date, responsive pleadings have not been filed. The Court notes that a motion to dismiss is not a responsive pleading within the meaning of **RULE 15(a)**. *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1111 (7th Cir. 1984).

the Court **STRIKES** the First Amended Complaint (Doc. 30). The Court **ALLOWS** Plaintiff up to and including June 13, 2005 to file an amended complaint that comports with **LOCAL RULE 15.1**

IT IS SO ORDERED.

Signed this 3rd day of June, 2005.

/s/ David RHerndon
United States District Judge